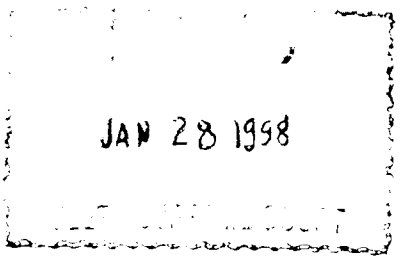
IN THE COURT OF APPEALS OF IOWA

No. 7-664 / 96-1958

000265

DONALD E. MARSHALL, JO A. MARSHALL, Individually and as Next Friend and Mother of ANGIE LYNN MARSHALL, a Minor, and AMY JO MARSHALL,

Plaintiffs-Appellants,



vs.

CROW PLUMBING AND HEATING, INC.,

Defendant-Appellee.

Appeal from the Iowa District Court for Poweshiek County, Richard J. Vogel, Judge.

The plaintiffs appeal from the district court's denial of their motion for a new trial. **AFFIRMED.**

William D. Olson and Vicki A. Dillon of Charnetski, Olson, Lacina, Pendleton & Garland, L.L.P., Grinnell, for appellants.

John B. Grier of Cartwright, Druker & Ryden, Marshalltown, for appellee.

Considered by Cady, C.J., and Streit and Vogel, JJ.

CADY, C.J.

This is an appeal by plaintiffs claiming the district court should have granted their motion for new trial in a tort suit against defendant. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On April 8, 1993, Donald Marshall, an employee of Plumbers Supply, Inc., delivered a shower unit to Crow Plumbing and Heating, Inc., in Victor, Iowa. Stephen Crow directed Marshall to a large door on the west side of the company's storage building. Marshall unloaded the shower unit in the doorway.

Crow decided to push the shower unit to the north of the door to get it out of the way. Marshall pulled on the shower unit by walking backwards. Due to the size of the shower unit, Crow was unable to see around it and was unaware Marshall was assisting him. As he was walking backwards, Marshall fell into a grease pit, which measured eight by three feet, and was five feet deep. The grease pit was about eight feet north of the large door. Marshall sustained injuries as a result of the fall.

Marshall, along with his wife and children, filed suit against Crow Plumbing, claiming it was negligent in failing to warn him or to keep a cover on the grease pit. At the trial, evidence was admitted to show the grease pit was open and obvious. Marshall admitted he would have seen the grease pit if he had looked in the direction he was walking.

On a special verdict form, the jury found plaintiffs had failed to prove their allegations of negligence. Plaintiffs filed a motion for new trial which alleged the

verdict was the result of passion and prejudice. The district court denied the motion for new trial. The court stated it would not substitute its judgment for that of the jury. Plaintiffs have appealed.

Plaintiffs contend the district court abused its discretion by failing to grant a new trial. A trial court may grant a new trial where the jury verdict was apparently influenced by passion or prejudice, resulting in either excessive or inadequate damages, where the verdict is not sustained by sufficient evidence, or is contrary to law. *Ort v. Klinger,* 496 N.W.2d 265, 269 (Iowa App. 1992). We are reluctant to interfere with a jury verdict and give considerable deference to a trial court's decision not to grant a new trial. *Spaur v. Owens-Corning Fiberglass Corp.*, 510 N.W.2d 854, 869 (Iowa 1994).

We find no abuse of discretion in the district court decision to deny the motion for new trial. Plaintiffs do not allege how the jury's verdict was influenced by passion or prejudice. Furthermore, the negligence issues depended upon the credibility of the parties. These are issues for the jury to decide. See Iowa R. App. P. 14(f)(10). Like the district court, we will not substitute our judgment for that of the jury.

We affirm the decision of the district court. Costs of this appeal are assessed to plaintiffs.

AFFIRMED.